

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**ARCHER AND WHITE SALES, INC.**

**Plaintiff,**

**v.**

**HENRY SCHEIN, INC., DANAHER  
CORPORATION, INSTRUMENTARIUM  
DENTAL, INC., DENTAL EQUIPMENT,  
LLC, KAVO DENTAL TECHNOLOGIES,  
LLC, DENTAL IMAGING  
TECHNOLOGIES CORPORATION,  
PATTERSON COMPANIES, INC., AND  
BENCO DENTAL SUPPLY CO.,**

**Defendants.**

**Civil Action No. 2:12-CV-00572-  
JRG**

**PLAINTIFF’S RESPONSE AND OBJECTION TO NOTICE OF JOINDER**

On January 24, 2020 the Court held a final pretrial conference. During that pretrial conference, the Court received a copy of the Order of the Supreme Court of the United States staying this case. Dkt. No. 511. During the conference the Court further noted the application of the stay, and held that this case would remain in recess until such time as the Supreme Court either denies the writ of certiorari filed by Defendants Henry Schein, or until the Supreme Court enters judgment—at which time the stay will be lifted.

Despite the stay, on January 28, 2019, Defendant Benco Dental Supply Co. (Benco) filed a “Notice of Joinder” (Dkt. No. 512) purporting to join a Motion to Compel Plaintiff to Arbitrate and to Stay Proceedings filed by defendant Henry Schein, Inc. (Schein) on October 1, 2012. Dkt. No. 512. Although Benco styled its pleading as a “notice,” it requests affirmative relief from this Court and seeks to join a pleading filed by another party over *seven years ago*.

Plaintiff Archer and White Sales, Inc. (Archer) files this response and objection solely to note its opposition and to preserve its rights. Given the stay in this case, the parties should not be seeking affirmative relief from the Court, nor should the court should be burdened with addressing Archer's response.<sup>1</sup> When the stay of proceedings is lifted, Archer will file an appropriate motion to strike or other response to the Notice of Joinder. By adhering to the Order of the Supreme Court, Archer is not waiving and fully intends to preserve all of its rights.

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<sup>1</sup>At such time as the documentation of settlement is completed with Defendants Patterson, Danaher and the Manufacturing Defendants, the settling parties will likely file requests for dismissal. Such filings seeking merely to bring portions of the dispute to an end are different from seeking affirmative relief in the litigation. But, the parties will of course defer to the Court's interpretation of the stay order.

Dated: January 29, 2020.

**McKool Smith, P.C.**

/s/ Samuel F. Baxter

Samuel F. Baxter

Texas State Bar No. 01938000

[sbaxter@McKoolSmith.com](mailto:sbaxter@McKoolSmith.com)

**McKool Smith, P.C.**

104 E. Houston, Suite 300

Marshall, Texas 75670

Telephone: (903) 923-9000

Facsimile: (903) 923-9099

Lewis T. LeClair

Texas State Bar No. 12072500

[lleclair@mckoolsmith.com](mailto:lleclair@mckoolsmith.com)

Gary Cruciani

Texas State Bar No. 05177300

[gcruciani@McKoolSmith.com](mailto:gcruciani@McKoolSmith.com)

Travis E. DeArman

Texas State Bar No. 24074117

[tdearman@McKoolSmith.com](mailto:tdearman@McKoolSmith.com)

Chelsea A. Priest

Texas State Bar No. 24102375

[cpriest@McKoolSmith.com](mailto:cpriest@McKoolSmith.com)

**McKool Smith, P.C.**

300 Crescent Court Suite 1500

Dallas, TX 75201

Telephone: (214) 978-4000

Facsimile: (214) 978-4044

Charles E. Fowler, Jr.

Texas State Bar No. 24083014

[cfowler@McKoolSmith.com](mailto:cfowler@McKoolSmith.com)

**McKool Smith, P.C.**

300 W. 6th Street, Suite 1700

Austin, TX 78701

Telephone: (512) 692-8700

Facsimile: (512) 692-8744

***ATTORNEYS FOR PLAINTIFF  
ARCHER AND WHITE SALES, INC.***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via electronic mail on January 29, 2020.

/s/ Travis DeArman  
Travis DeArman